

1 the FCC?

2 A Yes, I believe so.

3 Q So you knew at that point according to Ms.
4 Hamilton, Terry Easton had sent in a set of documents to the
5 FCC on January 23rd -- had sent in a document to the FCC?

6 A Well, I know I knew that -- see, I'm having
7 trouble here knowing whether I heard it from Ms. Milstein
8 telling me what Ms. Hamilton said or whether I knew it
9 because Mr. Easton was recounting that on our telephone
10 conference call with Mr. Sullivan. This was all happening -
11 -

12 Q Right.

13 A -- all at the same time. So that knowledge
14 entered my head that morning.

15 Q Not the night before or the day before to your
16 best of your recollection?

17 A Well, I remember -- I remember during the phone
18 call -- Mr. Easton may have told me that the night before.
19 I was kind of tired and tough drive and all that. My memory
20 is clearer on the 24th than it is on the 23rd because I
21 remember pretty clearly that phone call with Sullivan where
22 Jerry was telling everything that he knew.

23 And, yes, he sent a document and he -- you know,

1 that whole sequence of how all that -- which I'm sure we got
2 into later. So that was -- that was there. Now -- and I --
3 assuming that I spoke with Ms. Milstein after the conference
4 call, the fact that Ms. Milstein had said that Ms. Hamilton
5 had told her that Mr. Easton had been faxing documents
6 wouldn't register as anything --

7 Q Did she say that --

8 A -- it wouldn't register as anything different or
9 new or --

10 Q Okay.

11 A -- old news.

12 Q Did she say that Mr. Easton had faxed false
13 documents to the FCC?

14 A That I don't remember. That -- that would have
15 stuck out.

16 Q So you remember that she did not say that to you.

17 A No, I didn't -- I did not hear "false documents".

18 Q At the time that -- sorry, strike that. As Ms.
19 Milstein was telling you about Ms. Hamilton's -- I'm sorry
20 I'm getting into telling -- who telling whom. But we're
21 talking about what Cynthia Hamilton told Ms. Milstein, and
22 what Ms. Milstein told to you. Okay? And did the content
23 of what Ms. Milstein was telling you seem strange to you?

1 Did it -- was it unusual to you that Ms. Hamilton would be
2 saying that? Were you surprised?

3 MR. CARROCCIO: I object to the form of the
4 question. Saying what?

5 MS. POWER: I have said I think that the text --
6 that we're talking about this text -- the conversation that
7 went on between Ms. Milstein and Ms. Hamilton about Mr.
8 Easton's activity -- what he did that day, January 23rd.

9 THE WITNESS: Well, basically, my recollection is
10 that there's basically three things that were said: 1) She
11 thought Mr. Easton had committed the error; 2) she thought
12 that Mr. Easton was going to try and blame Ms. Hamilton;
13 well, who shot John. That didn't matter. I mean, that
14 was -- that's finger pointing and -- and to this day we
15 don't know --

16 MS. POWER: All right.

17 THE WITNESS: But in that circumstance where you
18 had two people hovering around the machine, two people who
19 had possible input who could possibly have added an extra
20 zero by mistake, that's clear. There's no -- no one is
21 intentionally doing anything here. No one intentionally
22 raises a bid by that much money. It's obviously a mistake.
23 But no one's going to want to come up to it. Well, I'm not

1 surprised at all. That's human nature: I didn't do it.
2 Right?

3 BY MS. POWER:

4 Q What was the third --

5 A The third one, that Mr. Easton was being less than
6 truthful in a telephone conversation with the FCC. Well,
7 all right, what's that referring to? That's referring to
8 it's the FCC's fault. This is more not me. So what I got
9 out of that was Mr. Easton was saying I didn't do it;
10 Cynthia Hamilton, she did it. Oh, Cynthia Hamilton didn't
11 do it? The FCC's computers must be wrong.

12 Well, now, we subsequently figured out that the
13 FCC had gotten the information correctly. Sullivan had
14 verified that. As a matter of fact, that was that morning
15 telephone conversation. He had gotten to whoever it is, the
16 Auction Bureau and keystrokes and whatever all that was.
17 That was -- so he came back and said, hey, the FCC got it
18 correctly.

19 But what I heard Ms. Milstein telling me that Ms.
20 Hamilton had told her was that Ms. Hamilton thought that Mr.
21 Easton was being less than truthful in talking to the FCC on
22 the telephone and saying the FCC's computers are wrong.
23 Well, my view of it was that, I mean, now that I had had the

1 conversation with Mike Sullivan, that at the time Easton was
2 agitated -- I talked to him on the phone -- upset. Easton
3 did not take criticism well.

4 He was not really -- some people when they make a
5 mistake, oh, I did it damn it. And some people say as long
6 as they can I didn't do it. But there is one of those whose
7 initial response was I didn't do it. So I read it as Easton
8 saying to the Commission, I think you did it.

9 Well, was that a true statement, a false
10 statement, an opinion? But it came after I was beginning to
11 understand how things were shaking out. So was it a
12 surprise? No. It was not inconsistent with what I was
13 beginning to understand about the sense of the problem and
14 the mistake.

15 Q Did it seem to -- did you ask Ronit if Cynthia had
16 anything to substantiate her belief or her claim that Mr.
17 Easton had committed the error?

18 A No. Hey, this is a conversation in passing as we
19 were crossing paths in kind of a central area. This was
20 really quite -- a relatively casual conversation.

21 Q Were you curious to know how the mistake had
22 happened?

23 A Sure.

1 Q Did you think that as one of the key people
2 involved in printing the -- sending the bid to the FCC, that
3 Ms. Hamilton would have important information to share?

4 A An important thing at that moment was to fix the
5 problem at the FCC. We got a 180 million dollar bid sitting
6 there with all the potential ramifications of penalty and
7 everything else. That's what was important. Who had the
8 fat finger, a lot of time to think of that.

9 Q Did you say anything to Mr. Easton about what
10 Ronit Milstein had told you about Ms. Hamilton and her --
11 Ms. Hamilton's beliefs?

12 A I don't believe so, no.

13 Q You didn't say to Terry that day, Cynthia thinks
14 you had something to do with it; Cynthia thinks that it was
15 your fault?

16 A This wasn't the time to be trying to fix blame.
17 This was the time to -- hey, the press already had articles
18 out there that PCS 2000 was blaming the FCC. It was damage
19 control time. That's what was important. So who did it
20 internally? In a crisis situation, you have to do your
21 hierarchy of what's important. Fix it at the FCC first.
22 Get a waiver request in.

23 Q Did you participate in that waiver -- the

1 preparation of that waiver request?

2 A The primary work was done by Mr. Easton and Mr.
3 Sullivan with me having oversight, and Terry -- Terry
4 handled that with Mr. Sullivan. I handled the bidding with
5 his doing oversight on the bidding. So I looked at the
6 drafts and that sort of thing and reviewed the documents. I
7 did not participate in the drafting of the documents. I
8 wasn't there. Terry had been there. He was the best source
9 of that.

10 So I did bidding. Terry worked with Sullivan on
11 the draft. But I would show the final bids to Terry before
12 we would put them in. Yes, yes, he approved. I would look
13 at the drafts from Sullivan of the waiver request and
14 affidavits and stuff as they came in.

15 Q These were faxes of drafts that were coming in
16 from Mr. Sullivan in Washington?

17 A Yes.

18 Q And what was important to you for that waiver
19 request to say?

20 A That the problem was at the PCS 2000 end and that
21 PCS 2000 did not blame the FCC or its computer system.

22 Q What was your speculation as to how the FCC would
23 treat your waiver request?

1 A My view of it was that the purpose of the
2 penalties was to deter frivolous bids or misleading bids or
3 bids that were designed to gain the auction one way or the
4 other; and that when those rules were drafted and adopted --
5 but no one anticipated a fat finger. And we knew by that
6 week that there had been other instances of other fat
7 fingers where a bid had been raised by a factor of ten or a
8 factor of a hundred.

9 And if by that time in the auction which was
10 fairly early on -- we were in round 11 of 180, 190 rounds
11 total; there would probably be more -- that the FCC would
12 have to give relief or they would run the risk of there not
13 being any bidders. This was obviously a mistake.

14 Q Okay.

15 A And so that at the end of the day, there would be
16 relief either in terms of a minimal penalty or a complete
17 waiver. And I believe that as of today in December 1997,
18 relief has been granted to all of the bidders, the fat
19 finger bidders with the exception of PCS 2000. So my
20 thinking has proved to be correct for all the bidders except
21 PCS 2000. But that was my thinking at the time.

22 Q All right. Let's move on time-wise to Friday,
23 January 26th.

1 A Yes.

2 Q Was there a management meeting of PCS 2000 or
3 Unicom that day?

4 A Yes.

5 Q And where did it occur?

6 A Actually, it was an executive committee meeting of
7 the senior people at PCS 2000. It was held in a conference
8 room at the San Mateo Group offices. This conference room
9 had a glass wall facing into the office area.

10 Q How many people attended it?

11 A I guess -- I'm counting spaces in the room. You
12 couldn't get more than seven in the room. There were maybe
13 five or six people.

14 Q Did you see Cynthia Hamilton at the San Mateo
15 Group offices that day?

16 A I did.

17 Q About what time?

18 A Around 4:00 or 4:30.

19 Q And did you speak to her?

20 A Yes.

21 Q Where did you speak to her? Was it in the
22 conference room?

23 A No. When she came in the door --

1 Q In the front door?

2 A -- she came in the door from the hallway into the
3 central area of the office. The conference room is
4 immediately to the right as you come in that door. So if
5 you're sitting facing the glass, you'll see anyone coming
6 down the hallway. She came in the door and I recalled
7 Ronit's description on the 24th of what she had said. And -
8 - and I wanted to go out and wish her well and hold her hand
9 a little bit and reassure her that whatever had happened,
10 that I still thought she was good people. So I got up, went
11 out the door, went over to her.

12 Q Was she alone?

13 A She had a friend with her. And I said, hi, how
14 are you; pleasantries. And she said did Ronit tell you what
15 I said. And I said yes. She said could I talk to you a
16 minute in your office. Sure. So we marched back to my
17 office which is, oh, I suppose kind of 20 feet from that
18 central hallway at the end of a hallway.

19 Q That's the three of you?

20 A The three of us. And I went into my office. And
21 she -- she said, well, you know, Terry was disposing of
22 documents, hauling stuff out of the trash can, took away my
23 binder, trying to blame me for the mistake. And I could see

1 that her head was still back in -- on Monday. And properly
2 so. She had been out of the office since Monday -- or
3 Tuesday, bidding day. And I realized that she hadn't been
4 in the office. She certainly hadn't been privy to my phone
5 conversations with Easton and Sullivan.

6 Q But she could have been talking to someone else
7 from the office, couldn't she?

8 A Well, I -- as far as I knew, she was gone. I
9 didn't see her around. And she certainly wasn't privy to
10 the waiver request which we had just filed with the FCC.

11 Q On that day?

12 A On that day, yes. That's what occupied the
13 morning of that day. Besides getting the bid in for
14 Friday -- remember, every day you've got to get a bid in.

15 Q Right.

16 A That was the -- the day that the final draft was
17 proofed. So I had to take time to read that, think about
18 it, approve it. There was a Lamoso declaration that had to
19 be signed. There was an Easton declaration that had to be
20 signed that were attachments. And we got back I think
21 before the executive committee meeting started or right
22 around there. We got the signed, stamped thing from the
23 Commission. I don't believe those things until I see the

1 stamp on it. I saw that.

2 So -- so all the things that she described that
3 Mr. Easton had been doing -- and there was a considerable
4 amount of detail which struck me as being things that were
5 important to her from where she sat, but which certainly
6 weren't inconsistent with anything else that I knew was
7 going on. For example, the bidding process, well, she had
8 never been around the bidding preparation process because
9 Mr. Easton and I would do that in the conference room. And
10 we might spend two or three hours doing it.

11 Q But what did she say about the bidding process?

12 A Well -- well, the -- she -- what she saw was
13 documents being thrown in the trash can. In the course of
14 ordinary bid preparation, it wasn't unusual to fill a trash
15 can full of stuff. You run a scenario. Too many bumps.
16 You run another scenario. Too much money. You run a --

17 Q Wasn't she involved in running these scenarios?

18 A No. She just did the actual bid transmission to
19 the FCC.

20 Q Okay.

21 A The scenario preparation was done by Mr. Easton
22 and myself in a different room. So what I'm saying is she
23 wasn't familiar with that process. So when she says to me,

1 Mr. Easton is filling the trash can with documents, I think,
2 yes, happens all the time. When she says he took my binder,
3 well, the binder was back there when I did the bid Tuesday
4 morning -- or Wednesday morning because when you're through
5 with the bidding, you take the papers and you put them in
6 the binder. So --

7 Q Did -- did the binder have Tuesday's bid in it
8 when you were there Wednesday?

9 A It had Tuesday material in it.

10 Q Did you look at it?

11 A I glanced at it.

12 Q Did you see what the bid was for --

13 A Well, that showed a bid of 18, not 180.

14 Q Okay.

15 A That's what it showed. But the fact that Mr.
16 Easton moved the binder -- and I thought, all right, if I
17 were in Mr. Easton's position, I would be looking high and
18 low for everything that there was. So did he grab the
19 binder? Yes. Did he put it back? It sure looked like it
20 to me.

21 So nothing inconsistent with the normal sort of
22 practice in terms of stuffing it in trash cans and certainly
23 nothing inconsistent with what I knew as -- as a result of

1 the preparation of the waiver request. The waiver request
2 had in it that Mr. Easton had gone back to his office to do
3 some more work on the computer, on the bidding stuff. So
4 nothing inconsistent; not red lights flashing from what she
5 was saying. That's what I'm saying.

6 Q What about her concern for Mr. Easton blaming her
7 for being responsible?

8 A Well, she was concerned. The same thing as when I
9 heard -- heard it from Ronit. Everyone blaming everyone.
10 The important thing was that PCS 2000 had accepted
11 responsibility for the error and wasn't pointing a finger at
12 the FCC and blaming the FCC. That was the important thing.

13 Q Did she say that Terry Easton had filed false
14 documents with the FCC?

15 A No.

16 Q Did she say that he had filed documents that
17 weren't accurate?

18 A I don't have that recollection. That would have
19 triggered something. If she had said -- if she had said I
20 have documents; if she had said I filed an affidavit with
21 the FCC; if she said anything of that sort, well, what would
22 I have done. The least I would have done was call Mike
23 Sullivan. Now, maybe at that hour he wasn't there.

1 Now, would I have marched her into the executive
2 committee meeting? I would have taken action. That's the
3 point. No, she did not demonstrate anything that required
4 action. Had I now known from, you know, all the other
5 depositions and stuff in this case that she was going out of
6 her way not to get me to go into that conference room --

7 Q She was trying to get you not to go into the
8 conference room?

9 A That's what I understand.

10 Q I don't -- what do you mean?

11 A I now know that she was very concerned about
12 getting her final paycheck and being able to cash it. I now
13 know that she was afraid that if I marched into that
14 conference room and confronted Mr. Easton with anything at
15 all, that she was concerned that Mr. Easton would stop
16 payment on her check. I now know that she didn't want to
17 say anything to me that would cause me to confront Mr.
18 Easton and I now understand why there's the confusion over
19 that meeting.

20 Q Did you believe what she was saying to be true?

21 A What she was saying to be true, yes.

22 Q Yes.

23 A Yes.

1 Q You had no reason to doubt the voracity?

2 A No. It's just that she had a different
3 perception. She hadn't been in the office since Monday.
4 She didn't know what had been disclosed and reported by Mr.
5 Easton to Mr. Sullivan. She didn't know what was in the
6 waiver request.

7 Q Did it raise any suspicions with you that there
8 was -- that she had knowledge that you didn't have --

9 A No.

10 Q -- about the events of that day?

11 A There was nothing -- there was nothing that was
12 not inconsistent with what I already knew. There was
13 nothing new or different. Well, a different perception,
14 putting things in the trash can. But with my own experience
15 with doing the bidding, that happened all the time. That
16 wasn't unusual. As a matter of fact --

17 Q Did you talk about --

18 A -- you would put it in the trash can and you would
19 pull out and you would retrieve and that's standard stuff.

20 Q When she said he took the binder, did she say the
21 binder would show that there should be an 18 million dollar
22 bid --

23 A No.

1 Q -- I mean, 180 -- I'm sorry, 180 million dollar
2 bid?

3 A No. She just said I couldn't find the binder.

4 Q And you knew -- you knew which binder she was
5 talking about?

6 A Well, we're talking about the binder that has
7 the -- this is the binder. That binder was the binder that
8 had a tab for each one of the rounds and it had copies of
9 the signed, initialed documents for each round.

10 Q Initialed by whom?

11 A Whoever was the -- who was authorizing the bidding
12 that day. If there were two people on it, two sets of
13 initials.

14 Q Two sets of initials?

15 A If -- one or two. There always had to be one at
16 least.

17 Q But you did go back into the management -- the
18 executive meeting after you spoke to her, isn't that
19 correct?

20 A Yes.

21 Q And what was being discussed at the time you went
22 back in, do you remember?

23 A Brand -- branding.

1 Q Brandy?

2 A Branding.

3 Q Oh. And what do you mean by that?

4 A Well, there was at that time the beginning
5 belief -- and today a more firm belief -- that one of the
6 important things in offering a PCS service is to have a
7 service brand. So -- and actually since then, AT&T has come
8 out with a PCS brand, PCS Digital or whatever it is, that
9 has gotten acceptance with the public. You now market
10 telephone service like toothpaste. And are you a Gleam
11 person or are you a Crest person; are you a VoiceCall person
12 or are you a --

13 Q Okay.

14 A And I don't -- I've been out of it so long, I
15 don't know the brands.

16 Q Right.

17 A But -- but the importance of a brand and do you
18 have your own; do you fill it with someone else who has a
19 brand; do you spend the money to develop the brand or do you
20 buy or do you lease or do you give royalties to the brand or
21 how do you -- you know, all that sort of thing.

22 Q Let's go back to the conversation that you had
23 with Ms. Hamilton. Did you say anything to her after she

1 described, say, these three areas that you have told us
2 about today of Mr. Easton's actions?

3 A Not really. Oh, well, I said, hey, you know, as
4 far as I am concerned, you have done what you were hired to
5 do and if you need a job recommendation, I will certainly be
6 happy to give you that and -- and that sort of thing. But I
7 don't -- I don't discuss with subordinates the strategy of
8 the company.

9 Q Do you think -- so did you tell her that PCS 2000
10 had filed a waiver request that day?

11 A No, not her business.

12 Q Do you think that she would have known that if
13 there were a dispute between you and Mr. Easton as to
14 whether she should get paid, that you -- if there was a
15 question as to whether or not she should get paid or that
16 she should get her last paycheck, that you would have
17 supported her being paid?

18 A I think she would have expected me to support her.
19 But in this case, the employer was San Mateo Group, Inc. I
20 did not sign on that account. If it had been one of the
21 other ventures with Mr. Easton, I would have signed the
22 check. I didn't have the power to do that.

23 Q And did she know that?

1 A I don't know.

2 Q Then you're -- are you saying that you didn't have
3 any sense that what Cynthia Hamilton was telling you that
4 day involved illegal activity by Mr. Easton?

5 A That's correct.

6 Q Did you say that it did not raise any suspicions
7 with you that there was more information that you did not
8 know that she knew?

9 A It did not raise suspicions. It was -- it was all
10 within the gamut of everything that we had discovered during
11 that week. It was not inconsistent.

12 Q Did you feel any kind of responsibility to tell
13 your fellow board members what Ms. Hamilton told you that
14 day when you went back into the meeting?

15 A No. It was nothing new.

16 Q Did you feel any responsibility to tell them the
17 next day at the formal board meeting?

18 A No. The same thing. It was -- it was a secondary
19 information from a secondary source. We had the primary
20 information from the primary source already. We had already
21 submitted the waiver request.

22 Q Did there come a point in time within -- excuse
23 me. I'll skip that for the time being. When you were at

1 the Unicom board meeting on Saturday, January 27th, were
2 there any discussions concerning the bidding error?

3 A Yes. There were two areas. One, Terry made a
4 long presentation. And there was discussion of how to
5 prevent it from happening again. The decision was to get
6 the Price Waterhouse, a major accounting firm, to get
7 their -- some people from their computer division to come in
8 and, as it were, do a system audit to 1) try to determine
9 what happened internally; could the bidding error have come
10 up from some error in the system, and secondly, to develop
11 safety checks or additional procedures to prevent it from
12 happening again.

13 And as a result of that audit or that review,
14 let's say, additional procedures were instituted in the way
15 that bids were physically entered. You had to go through a
16 couple of more steps and you had to look and you had to
17 design such -- you had to think twice about each bid rather
18 than think once about each bid.

19 Q Did you participate in those discussions?

20 A I was at the meeting. I don't recall specific
21 participation. I'm pretty sure I voted on it. The minutes
22 speak for themselves on that.

23 Q Did you still have what Cynthia Hamilton had told

1 you the day before in your mind while you -- while you were
2 listening to the discussions that day?

3 A Not particularly because what Cynthia Hamilton --
4 she hadn't told me anything new.

5 Q When you say not particularly, was there some
6 aspect of it in general that you had in your mind?

7 A I was thinking a lot more about the waiver request
8 and the issues dealing with the FCC, how to prevent it from
9 happening again.

10 Q Did Romulus Telecommunications, Inc. have a
11 contract, an agreement with Unicom where it was assumed that
12 mistakes would be made and there was some kind of provision
13 dealing with the eventuality of these mistakes?

14 MR. CARROCCIO: I'll object to the form of the
15 question.

16 BY MS. POWER:

17 Q Do you understand what I mean, Mr. Breen?

18 A There was a contract and it did have an indemnity
19 clause.

20 Q Okay. And what do you remember the content of
21 that indemnity clause?

22 A Well, the contract provided that Romulus
23 Telecommunications would provide certain services including

1 bidding services. And there was a clause in that contract
2 which I drafted which said in effect anytime you deal with
3 the FCC, the unexpected is commonplace; that Romulus will be
4 indemnified for bids, bids that are too high, bids that are
5 too low, bids that are withdrawn, bids that are not
6 withdrawn, and that the damages would be limited in any case
7 to \$25,000.00.

8 Q Was that indemnity clause discussed that day?

9 A No.

10 Q Was there an agreement between Romulus
11 Telecommunications, Inc. and PCS 2000 that RTI would --
12 would receive a certain amount of money upon PCS being
13 granted licenses?

14 A Yes. There was a -- a reserve account. I don't
15 recall now the exact title of the agreement. And on the
16 award of licenses to PCS 2000, the amount of that account
17 would be released to Romulus.

18 Q And what was that amount?

19 A Roughly six and a half million dollars. Interest
20 has been accruing. So at this point, it's probably more.

21 Q During that board meeting on January 27th, you
22 said Mr. Easton gave a lengthy account of what had occurred
23 to the board members who obviously had not been present that

1 day, is that correct?

2 A That's right.

3 Q Did anyone ever ask Mr. Easton that day if he had
4 misrepresented any facts to the FCC?

5 A I don't have any recollection of that.

6 Q Did they ask him if he might have said something
7 to the FCC at that time that he later found out was not
8 true; that he might have said something on January 24th that
9 he later found out he was mistaken about?

10 MR. CARROCCIO: Excuse me, Counsel. Did you mean
11 January 24th?

12 MS. POWER: I'm -- I'm -- I'm talking about
13 January 23rd when Mr. Easton spoke to the FCC. Did I say
14 the 24th?

15 MR. CARROCCIO: You did.

16 MS. POWER: I'm sorry. Thank you.

17 THE WITNESS: I don't recall any such question.

18 BY MS. POWER:

19 Q Mr. Breen, it's been said that someone saw you
20 sleeping that day at the meeting. Is that true?

21 A It's possible. It had been a long week.

22 Q How long did the meeting last?

23 A At least a half day. It may have lasted all day.

1 I don't have a specific recollection.

2 Q And that was Saturday.

3 A Yes.

4 Q Was Ronit Milstein at the meeting that day?

5 A She may have been there in an administrative
6 capacity, but she was not a member of the board.

7 Q Okay. Did Ronit say to you either Saturday or the
8 day before Friday, January 26th, that it seemed unfair to
9 her that Mr. Easton seemed to be shifting the blame of the
10 error to Ms. Hamilton?

11 A I don't have a specific recollection, but she
12 could well have said that. That was not an uncommon thought
13 around the office.

14 Q So you don't remember that specifically being said
15 that week by Ms. Milstein?

16 A I don't have a specific recollection, but I'm
17 pretty sure I heard at least half a dozen people say that.
18 So if she had said it, that wouldn't have stood out.

19 Q Okay. Who were some of the people who might have
20 said that?

21 A I can't think of anyone who didn't say it.

22 Q And why is that? Is Mr. Easton's word not
23 accepted in the office of SMG -- I mean of San Mateo Group?